THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.1093 of 2000

Date: 23-10-2007

Between:

Urvasi Enterprises

... Petitioner

And

The Secretary to Government
Department of Revenue and others.

...

Respondents

ORDER:

This writ petition has been filed seeking a *Writ of Mandamus* to declare the action of the respondents in demolishing the compound wall constructed on the site belonging to the petitioner's firm in Survey No.157/1 and 157/2 falling within the limits of the 3rd respondent, Municipality, as arbitrary and illegal and consequently to direct the respondents to permit the petitioner to reconstruct the compound wall on the said site and also declare that the petitioner is entitled to compensate for the illegal acts done by the respondents.

Brief facts of the case are that the petitioner is a firm known as Urvasi Enterprises represented by one Mr. Rowthu Venkateswara Rao. The petitioner submitted that he along with one Rowthu Srinivasa Rao, Rowthu Venkata Appa Rao, Rowthu Surya Prakash Rao and Iyyapu Kurma Rao,
as partners, have constituted the partnership firm in the name and style of Urvasi Enterprises and it manages a couple of theatres and also a hotel. The claim of the petitioner is that it purchased a vacant site to an extent of 10,553 square yards (approximately) in T.S. No.157/1 and 157/2 bearing premises No.2-1-66 fallen within the limits of the
3rd respondent, Kakinada Municipality. A compound wall was also constructed around its periphery and certain other constructions

were also made thereon. The said property was purchased by the firm through the registered sale deed dated 29-12-1984. Thus the petitioner's firm claims to be an absolute owner and possessor of the said property.

As per the conditions in the partnership deed, even the managing partner Sri Rowthu Venkateshwara Rao has no power or authority to deal with or transfer the aforesaid site or any portion thereof without the consent or knowledge of the remaining partners. While the firm was in peaceful possession and enjoyment of the said property,

the 3rd respondent has contemplated demolition of portions of compound wall in the said site. In those circumstances,

a suit was instituted in O.S. No.182 of 1992 on the file of the

I Additional District Munsif Court, Kakinada, seeking permanent injunction restraining the defendant therein from carrying out such works on the site of the firm.

While the matter stood thus, it came to know that one of the partners appeared to have gifted certain portions of the property in five gift deeds to the 3rd respondent. The said gift deeds cover the total land to an extent of 1081.19 square yards and the same was came to know only when the

3rd respondent filed counter in the suit referred to above.

On coming to know about this fact and when the

3rd respondent threatened demolition of the constructions,

another suit was instituted in O.S. No.137 of 1993 against

the 3rd respondent seeking injunction restraining the defendant

therein from interfering with the peaceful possession and enjoyment and also for declaration of the plaintiffs therein title to the schedule property. The interim injunction was also sought for and that was granted.

The primary contention canvassed in the above said suit was related to the competence of one of the partners to gift away the property without consent of the partners as envisaged in the partnership deed and the said suit is pending.

Further, when the matter stood thus, the 2nd respondent, Revenue Divisional Officer, has taken steps as a measure of widening the roads and unauthorisedly demolished the compound wall of the property belonging to the firm on 10-12-1999 incidentally that was on Friday at about 7.30 p.m. It is also submitted that no notice was issued before the impugned action, though there was a specific injunction against the 3rd respondent, who was contemplating such an action. Thus the respondent have acted in a high handed manner and has not even adhered the basic principles of natural justice of putting the petitioner firm on notice before the action of demolishing the property is taken.

Counter affidavit has been filed on behalf of the respondents 1 and 2 wherein it is submitted that the traffic is heavily increased in Kakinada town in the last few years. With a view to make it convenient to the vehicular movement and to avoid traffic congestion and in the interest of public, the Deputy Executive Engineer, Roads and Buildings, Kakinada filed a requisition before the Revenue Divisional Officer to evict all the encroachments on

either side of the road from Bhanugudi Junction to Sarpavaram Junction,

so as to make widening the road into four-liner road. Accordingly, hundreds of encroachers vacated the encroachments themselves on either side of the road voluntarily. The Roads and Buildings authorities started execution of widening of road work from Bhanugudi Junction to Sarpavaram Junction in the first phase. At the request of the 2nd respondent, the petitioner approached on behalf of the firm and informed that the site in T.S. No.157/1 and 157/2 of Kakinada Municiplity was purchased by the said firm in the year 1984 and he also informed that it is a fact that one of the partners of the said firm gifted certain portion of the site in question to the Kakinada Municipality. At that time

the 2nd respondent apprised him the necessity of widening of roads in view of increased traffic, traffic congestion and public interest. On the request of the 2nd respondent for removal of compound wall along the road margin, he promised to cooperate with the authorities and requested to give two days time to consult with the other partners to remove the compound wall of the said property. Keeping the promise,

the petitioner himself got removed the compound wall of the said property. Subsequently, after removal of compound wall, the petitioner again approached the 2nd respondent and requested to permit him to reconstruct the compound wall by leaving ten feet width from the road point so as to make it convenient for widening the road. Then the 2nd respondent suggested him to approach the Municipal Commissioner, Kakinada along with a plan for

construction of compound wall so as to get approval, as he is the competent authority to approve the plan and to grant permission for construction of compound wall. But without doing so, surprisingly, he issued a legal notice on 16-12-1999 and then he filed the present writ petition.

The 3rd respondent also filed a separate counter affidavit stating that the petitioner filed O.S. No.137 of 1993 against the Municipality questioning the validity of gift deeds and for declaration of petitioner's title over the schedule property and for consequential injunction and the said suit is pending. After verifying the suit records it is found that the petitioners got issued a legal notice dated 16-12-1999 to all the respondents herein alleging that on the intervening night of 10th and 11th of December, 1999, the officials removed the boundary wall and claimed compensation and also to restore the compound wall. The petitioners filed I.A. No.1368 of 1999 in O.S. No.137 of 1993 on 15-12-1999 in the Court of the

I Additional Senior Civil Judge, Kakinada to order prosecution of officers of the 1st respondent and the 1st defendant Kakinada Municipality, viz., Commissioner of Municipality and Town Planning Officer of Kakinada for willful violation and disobedience of orders of this Court dated 02-04-1993 in I.A. No.1353 of 1993 in the suit by putting them in civil prison. It is also submitted that a detailed counter on behalf of the 3rd respondent was filed in the said interlocutory application and the petitioner already filed application for launching prosecution against the 3rd respondent

and the same is pending adjudication before the I Additional Senior Civil Judge, Kakinada. Further it is also submitted that during December 1999 the 3rd respondent did not take up any road widening works in Kakinada town. The Revenue Divisional Officer, 2nd respondent, has taken up removal of encroachments on the road margins only. The 3rd respondent did not participate in removal of encroachments. After verifying the records, there is no separate file maintained by the 3rd respondent, as there was no proposal of road widening in Kakinada town from November, 1999. Submitting the above facts, the 3rd respondent sought for dismissal of the petition.

Having regard to the facts and circumstances of the case, it appears that the 2nd respondent has already taken steps for removal of the encroachments within the road margin for smooth flow of the traffic. As far as the

3rd respondent is concerned it is submitted that he has not taken any steps for widening the roads and submitted that there is litigation pending in connection with the property in question. Therefore, the writ petition is dismissed against the

3rd respondent. In view of the stand taken by the respondents 1 and 2 that having considered the request of the 2nd respondent, the petitioner firm itself demolished the compound wall leaving certain area for the purpose of road widening and if any property is being affected belonging to the petitioner, it is always open for him to make appropriate claim for compensation and authorities concerned shall consider the same, in accordance with law,

following due process of law and pass appropriate orders. Accordingly,

the Writ Petition is disposed of. There shall be no order as to costs.

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JUSTICE G. CHANDRAIAH

Date: 23-10-2007

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